STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: July 25, 2023)

TOU SYRIPANNHO, et al.,	:	
Appellants,	:	
	:	
vs.	:	**C.A. No. PC-2022-692**
	:	
TWIN RIVER CASINO, and	:	
MATTHEW WELDON in his capacity	:	
as DIRECTOR of the DEPARTMENT	:	
OF LABOR & TRAINING,	:	
***Appellees*.**	:	

DECISION

NUGENT, J. This matter is before the Court on appeal from a January 5, 2022 decision of Appellee Department of Labor and Training (DLT) relating to claims by employees of Appellee Twin River Casino (Twin River) for Sunday premium pay pursuant G.L. 1956 § 25-3-3(a). The DLT consolidated Appellant Tou Syripannho's claim with other similarly-situated claimants, involving approximately: (1) 168 union table game dealers (Union Claimants); and (2) ninety-two non-union table game supervisors, managers, and other employees (Non-Union Claimants) (collectively Appellants). *See* R. (Table of Wage Compls.); Br. of Def.-Appellee Twin River Casino (Twin River's Mem.) 1; Appellee's, Matthew Weldon in his Capacity as Director of DLT, Br. in Supp. of its Opp'n to Appellants' Admin. Appeal (DLT's Mem.) 1 n.2.[1] Jurisdiction is pursuant to G.L. 1956 §§ 25-3-5 and 42-35-15.

[1] The original certified administrative record includes four unnumbered files; namely, the parties' briefing to the Department of Labor and Training (DLT) hearing officer and the hearing officer's January 5, 2022 decision. *See generally* R. (filed Feb. 28. 2022). Subsequently, this Court requested that the DLT supplement the record to include "the *entire record* of the proceeding under review," as required by G.L. 1956 § 42-35-15(d), including but not limited to the relevant wage complaints and the collective bargaining agreements (CBAs) referenced in the January 5, 2022

I

Facts and Travel

A

Sunday Premium Pay Statute

An overview of the history and language of the relevant statutes establishing the Sunday premium pay requirement and its various exemptions will aid in understanding the travel of Appellants' individually-filed Complaints for Non-Payment of Wages (Wage Complaints), the issues implicated, and the parties' related arguments.

In 1976, the General Assembly passed "An Act Regarding Work Permits on Sundays and Holidays" (Sunday Pay Act) making it unlawful for an employer to require or permit work on Sundays or holidays "except for work of absolute necessity or work performed pursuant to a permit" of economic necessity issued by the DLT. *See* P.L. 1976, ch. 110, § 2 (codified as §§ 25-3-2, 25-3-3).[2] The Sunday Pay Act also permitted Sunday employment of any "necessary persons" to conduct licensed athletic events. *Id.* (codified as § 25-3-2); *see also* G.L. 1956 ch. 6 of title 41. Where Sunday employment was permitted, the Sunday Pay Act required the employer to compensate the employee at one and one-half times the normal rate of pay. *See* P.L. 1976, ch. 110, § 2 (codified as § 25-3-3).

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decision. (Order, June 29, 2023.) In response, DLT supplemented the record to include five additional files: (1) three CBAs covering different time periods; (2) Appellant Tou Syripannho's wage complaint; and (3) a table of limited information about the additional claimants. (July 14, 2023 DLT Letter.) Both the original and supplemented files will be cited as "R." followed by a parenthetical indicating the individual file name.

[2] Interestingly, the U.S. Supreme Court has detailed the history of "Sunday Closing Laws" dating from Henry III through colonial and modern-day America and the evolution of these "blue laws" from a religious aid to a secular tool to promote general well-being. *See McGowan v. Maryland*, 366 U.S. 420, 431-452 (1961).

In 1989, the General Assembly amended § 25-3-2 to clarify that the Sunday premium pay requirement applied to "[a]ny person, association, or corporation receiving a permit from the division of racing and athletics of the department of business regulation to operate any horse racing, dog racing, or jai alai event under the parimutuel system[.]" *See* P.L. 1989, ch. 56, § 1 (codified as § 25-3-2). "Necessary persons" employed to conduct such an event were required to be compensated at one and one-half times the normal rate of pay. *Id.*

In 1998, the General Assembly amended the Sunday Pay Act to remove the prohibition against Sunday and holiday work. *See* P.L. 1998, ch. 73, § 1; P.L. 1998, ch. 409, § 1. Employers were no longer required to obtain a permit of economic necessity or demonstrate absolute necessity to justify Sunday work. *Id.* Nevertheless, the amended Act retained the Sunday premium pay requirement unless otherwise exempted. *Id.* As it stands today, § 25-3-3(a) provides that "[w]ork performed by employees on Sundays . . . must be paid for at least one and one-half . . . times the normal rate of pay for the work performed[.]" (Section 25-3-3(a).)

There are, however, numerous exceptions to this Sunday premium pay requirement. *See, e.g.*, § 25-3-1(3) (excluding, for example, individuals employed in agriculture, maritime trades, gas exploration, and telephone customer service, among other categories). As is relevant to the instant appeal, § 25-3-1 exempts any "individual employed in a restaurant, hotel, motel, summer camp, resort, or other recreational facility (except health clubs)." (Section 25-3-1(3)(iv).) "Recreational facility" is not defined in title 25. *See generally* § 25-3-1. Title 23, however, which is titled "Licensing of Recreational Facilities," defines a "[r]ecreation facility or use" as "includ[ing], but . . . not limited to, hotels, motels, motor courts or inns, tourist cabin establishments, camping areas, amusement places, bathing beaches, mobile recreational vehicle facilities, and parks." (G.L. 1956 § 23-21-1(4).) In 2009, a DLT hearing officer determined that

Twin River's Lincoln facility was a "recreational facility, as defined in . . . § 25-3-1(3)(iv)" because the facility had, since 2005, "add[ed] new gaming and entertainment areas, establish[ed] additional dining and [added] an entertainment venue[.]" (DLT's Mem. Ex. C (*In re Security Surveillance & Other Non-Union Personnel*, Case No. 08-183, et al. (DLT Oct. 27, 2009)) 6-7.)

Separately, G.L. 1956 § 41-11-2(e) exempts certain specifically licensed entities from Sunday premium pay requirements. (Section 41-11-2(e).) The relevant language took effect July 2, 2016 and states that

> "[n]otwithstanding the provisions of any general law, public law, or local ordinance to the contrary, including without limitation the provisions contained in §§ 5-23-2(d), 25-3-2 and 25-3-3, a licensee, other than an entity licensed pursuant to § 41-7-3(a) and (c), shall not be required to provide employees time and a half pay for the work performed during Sundays and holidays." *Id.*

Section 41-11-1(2) defines a "licensee" as "an entity licensed pursuant to chapters 3.1 and 7 of this title." (Section 41-11-1(2).) Those chapters, in turn, cover: (1) licensing by the division of gaming and athletics of dog racing in the towns of Burrillville, Lincoln, and West Greenwich (G.L. 1956 § 41-3.1-3(a)); and (2) pari-mutuel licensing of Twin River's Tiverton facility. *See* G.L. 1956 § 41-7-3(d); *see also Burns v. Sundlun*, 617 A.2d 114, 118 (R.I. 1992). Section 41-3.1-3(c) also provides that "[a]ny entity having been issued a license to operate a dog track prior to December 31, 2008" shall be deemed a "licensee[ ] as defined in § 41-11-1[.]" (Section 41-3.1-3(c).) Further, any successor-in-interest to Newport Grand's former jai alai license is also deemed a "licensee" as defined in § 41-11-1. (Section 41-7-3(c).) Section 41-11-1 does not, however, define "employees." *See generally* § 41-11-1.

The Director of the DLT is empowered to enforce and administer the provisions of the Sunday Pay Act. (Section 25-3-6.) To that end, an employee alleging a violation of the Sunday Pay Act may file a wage complaint with the DLT. *See, e.g.*, R. (Syripannho Wage Compl.); *see*

also § 25-3-5; *Casperson v. AAA Southern New England*, No. PC-2014-6139, 2016 WL 6107473, at *2 (R.I. Super. Oct. 13, 2016).

B

Collective Bargaining Agreement

Also relevant to this appeal is the collective bargaining agreement (CBA) in place between the Union Claimants and Twin River.

The Preamble to the CBA states that the agreement is intended to "set forth the positions of [Twin River] and the Union on rates of pay, hours of work and other conditions of employment[.]" (R. (CBA eff. Apr. 1, 2017, at 1.)[3] Relating to those rates of pay, Articles IV and V of the CBA—addressing "Wages, Hours and Scheduling" and "Holidays"—include provisions covering hourly rates, toke counting rates, special assignment rates of pay, annual bonuses, a "grave shift" differential, and holiday pay, but do not otherwise include any reference to Sunday scheduling or Sunday pay. *See generally id.* at 5-10, arts. IV, V.

Separately, in the event of a grievance, Article XVI of the CBA mandates a two-step grievance procedure for "such disputes, controversies and grievances, which may arise between [Twin River] and the Union under the Terms of this Agreement." *Id.* at 22, art. XVI, § 1. An aggrieved employee must first discuss the grievance with a supervisor, either on their own or through their union steward. *Id.* If the grievance cannot be resolved, the matter may then be

[3] The DLT provided three separate CBAs, effective as of (1) May 1, 2015 to December 31, 2016, (2) April 1, 2017 to June 30, 2020, and (3) July 1, 2021 to October 31, 2022. *See* July 14, 2023 DLT Letter ¶ 1; R. (CBA eff. May 1, 2015); (R. (CBA eff. Apr. 1, 2017); R. (CBA eff. July 1, 2021). As to the language of the CBAs relevant to this appeal, all three include identical or similar provisions. Therefore, for ease of reference, the Court will cite exclusively to the April 1, 2017 CBA.

referred to binding arbitration. *Id.* at 23, art. XVI, § 1-2. "The arbitrator shall not have the power to amend, add to, or alter the provisions of this Agreement[.]" *Id.* at 23, art XVI, § 2.

C

Travel

On various dates in 2019 and 2020,[4] Appellants individually filed their Wage Complaints with DLT against Twin River, seeking Sunday premium pay pursuant to § 25-3-3(a). (Appellants' Mem. in Supp. of their Admin. Appeal (Appellants' Mem.) 2; DLT's Answer ¶ 3.) Following an investigation by DLT's Labor Standards Unit, DLT dismissed the Wage Complaints as not just and valid, specifically finding that Twin River is exempt from the provisions of § 25-3-3 as a "recreational facility."[5] *See* Appellants' Mem. 3; Twin River's Mem. 2; R. (DLT's Mem. of Law) 2; *see also* G.L. 1956 § 28-14-19(a).

On appeal to the Director of the DLT, the parties agreed that no material facts were in dispute and that the Wage Complaints implicated common legal issues that could be collectively decided based on the parties' briefing. (DLT's Mem. Ex. A (April 5, 2021 DLT Order); July 14,

[4] Twin River primarily relies upon G.L. 1956 § 41-11-2 in arguing that it is not obligated to pay Appellants a Sunday premium. *See* Twin River's Mem. 6. Rhode Island only enacted the relevant language in § 41-11-2 on July 2, 2016. *See* P.L. 2016, ch. 305, § 1; P.L. 2016, ch. 325, § 1. Whether any of the 2019 wage complaints included claimed wages predating July 2, 2016 and permitted by the three-year statute of limitations in G.L. 1956 § 28-14-20 is not an issue before the Court. *See* July 14, 2023 DLT Letter ¶ 2 (stating that all of the Complaints were "similarly situated"); R. (Table of Wage Complaints) (excluding dates of claimed wages).

[5] This conclusion is implied in the parties' briefing, but the DLT did not include the initial notices of dismissal in the record to this Court. The DLT is reminded that G.L. 1956 § 42-35-15(d) requires that the record transmitted to the Court include "the *entire record* of the proceeding under review." (Section 42-35-15(d) (emphasis added).) This oversight does not impede the Court's ability to decide this appeal.

2023 DLT Letter ¶ 3.) A hearing officer, acting as the Director's representative, issued a January 5, 2022 decision (DLT Decision) identifying four controlling legal questions:

> "(1.) Whether this hearing officer has jurisdiction to hear the claims of the union table game dealers or whether the applicable Collective Bargaining Agreements between Twin River and the Union Table Game Dealers controls;
>
> "(2.) Whether these two (2) classes of employees, union table game dealers and non-union supervisors, are entitled to Sunday premium pay as required by . . . § 25-3-1;
>
> "(3.) Whether Twin River is a 'recreational facility' as set forth in . . . § 25-3-1(3)(iv); and
>
> "(4.) Whether . . . § 41-11-2 created an exemption to the Sunday Pay Statute for all employees of Twin River." (R. (DLT Decision) 2.)

As to the first question, none of the parties raised or briefed the jurisdictional issue before the hearing officer. *See generally* R. (DLT's Mem. of Law); R. (Mem. in Supp. of Pet'rs' Wage & Hour Compls. for Premium Pay); R. (Br. of Twin River Casino Hotel). Nevertheless, the hearing officer determined *sua sponte* that, at all relevant times, the various revisions of the CBAs included a mandatory grievance procedure that the Union Claimants were required to exhaust before filing a claim with the DLT. (R. (DLT Decision) at 4-7 (citing *Belanger v. Matteson*, 115 R.I. 332, 346, 346 A.2d 124, 133 (1975); *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 565-68 (1960)).) Finding that the Union Claimants had failed to pursue and complete the contractual grievance procedure, the hearing officer determined that the DLT lacked jurisdiction to hear that subset of Wage Complaints. *Id.* at 7.

As to the Non-Union Claimants, the hearing officer declined to address question three—whether Twin River was a "recreational facility" excluded from the Sunday premium pay requirement by operation of § 25-3-1(3)(iv). *Id.* at 9. Although he acknowledged the 2009 DLT

decision finding that Twin River's Lincoln facility was a "recreational facility," he determined that chapter 3 of title 25 did not define "recreational facility" and that the term was otherwise ambiguous. *Id.* at 8-9. He concluded, however, that it was unnecessary to resolve this ambiguity because § 41-11-2(e) dispositively exempted Twin River from the Sunday premium pay requirements of § 25-3-3. *Id.* at 9.

In resolving question four, the hearing officer ruled that § 41-11-2(e) "had the intended goal of relieving Twin River of the obligation to pay Sunday wages." *Id.* at 9-10; *see also id.* at 3. The DLT Decision made no findings of fact as to Twin River's license type, status, or effective date for either the Lincoln or Tiverton facilities or their controlling entities, but observed in a footnote that "[t]here [did] not appear to be any dispute that Twin River is a proper licensee as described in § 41-11-2." *Id.* at 9 n.12.[6]

The hearing officer therefore dismissed the Union Claimants' Wage Complaints for lack of jurisdiction and denied and dismissed those of the Non-Union Claimants based on his conclusion that Twin River was a "licensee" exempted from Sunday premium pay obligations by operation of § 41-11-2(e). *Id.* at 11.

Now before the Court is the consolidated administrative appeal of all claimants, both Union and Non-Union, in which they argue that: (1) any failure to utilize the grievance procedure outlined in the CBAs does not divest the DLT of jurisdiction to resolve the merits of the Union Claimants'

[6] Because Appellants do not challenge this determination on appeal, the Court does not address it. Nevertheless, the Court notes that an employer seeking to rely on an exemption from the Sunday Pay Act has the burden of proof and must present evidence as to the applicability of the exemption. *Cf. Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1018 (R.I. 2004) (stating that an employer has the burden of proof as to whether a terminated employee is ineligible for unemployment benefits); *Corning Glass Works v. Brennan*, 417 U.S. 188, 196-97 (1974) ("[T]he application of an exemption under the Fair Labor Standards Act is a matter of affirmative defense on which the employer has the burden of proof.").

Wage Complaints (Appellants' Mem. 5-7); (2) Twin River is not otherwise a "recreational facility," *id.* at 8-9; and (3) Section 41-11-2(e) applies only to simulcast racing employees and not Appellants, who are table game dealers and supervisors. *Id.* at 9-11.

II

Standard of Review

Pursuant to § 42-35-15, the Superior Court has jurisdiction to review appeals of DLT decisions. Specifically, § 42-35-15(g) provides:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." (Section 42-35-15(g).)

An agency's interpretations of law "are not binding on the reviewing court." *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008) (internal quotation omitted). This Court reviews an agency's determinations of law *de novo* "to determine what the law is and its applicability to the facts." *Id.* (internal quotation omitted). The agency's construction of a statute "will not be considered controlling by reviewing courts if the construction is clearly erroneous or unauthorized." *See Flather v. Norberg*, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 n.3 (1977). If the statute in question is ambiguous, the Court will give deference to an agency's reasonable construction where the agency has been entrusted with its administration and

enforcement. *Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340, 345-46 (R.I. 2004). If, however, the statute is not susceptible to different reasonable meanings, no deference will be given to the agency's construction. *See Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 101 (R.I. 2007).

III

Analysis

A

Union Claimants

As a preliminary matter, the Court notes that due process protections apply with equal force to administrative proceedings. *See State v. Manocchio*, 448 A.2d 761, 764 n.3 (R.I. 1982) ("[P]rocedural due-process requires certain minimal standards of notice, hearing, and opportunity to respond adequately before a governmental agency may effectively deprive an individual of life, liberty, or property."). Consequently, a hearing officer generally should not raise a dispositive exhaustion issue *sua sponte* without affording the parties notice and an opportunity to be heard. *See Bruce Brayman Builders, Inc. v. Lamphere*, 109 A.3d 395, 398-99 (R.I. 2015). This suit demonstrates the import of such a rule because, as will be discussed, the hearing officer's reasoning and conclusion as to the *sua sponte* exhaustion issue affecting the Union Claimants was incorrect.

"[A] valid employment requirement prescribed by state law cannot be negotiated and is not a proper subject for arbitration." *Town of West Warwick v. Local 2045, Council 94*, 714 A.2d 611, 612 (R.I. 1998) (mem.); *see also Community College of Rhode Island v. CCRI Educational Support Professional Association/NEARI*, 184 A.3d 220, 229 (R.I. 2018). In *Local 2045, Council 94*, the Court observed that where no factual issues are in dispute and a law relating to a condition of employment does not allow for any discretion, a trial justice does not err in concluding that the

issues raised are nonarbitrable. *See Local 2405, Council 94*, 714 A.2d at 612. Later analyzing *Local 2405, Council 94* and similar cases, our Supreme Court further stated that its

> "cases in this area all boil down to a fundamental proposition: applicable state employment law trumps contrary contract provisions, contrary practices of the parties, and contrary arbitration awards. Thus, if a statute contains or provides for nondelegable and/or nonmodifiable duties, rights, and/or obligations, then neither contractual provisions nor purported past practices nor arbitration awards that would alter those mandates are enforceable. For this reason, *labor disputes and grievances that seek to modify applicable state law are not subject to arbitration* because the arbitrator has no power to do so even if the parties to a CBA have agreed to such a modification or have conducted themselves in a way that contravenes what applicable state law requires." *State v. Rhode Island Alliance of Social Services Employees, Local 580, SEIU*, 747 A.2d 465, 469 (R.I. 2000) (emphasis added) (hereinafter *RIASSE*).

Applying this reasoning to the instant matter, an employer's statutory obligation to compensate its employees at time-and-a-half on Sundays pursuant to § 25-3-3(a) is a "nonmodifiable dut[y]" that is similarly not subject to contractual grievance mandates or arbitration. *Cf. id.*

Alternate case law acknowledging that "arbitrators may and should decide questions of relevant state law and the interpretation thereof in resolving a grievance brought pursuant a CBA" does not alter this conclusion. *See Rhode Island Brotherhood of Correctional Officers v. State*, 643 A.2d 817, 821 (R.I. 1994). The necessity and ability to make such decisions and interpretations arises when the "grievance . . . dr[aws] its essence from the CBA[.]" *Id.* at 822. Here, by contrast, Appellants do not claim that Twin River violated the CBA, they claim that Twin River violated Rhode Island law. Consequently, Appellants' claim is not governed by, nor draws its essence from, the CBA. *See United Steelworkers of America*, 363 U.S. at 567-68 ("The function of the court is . . . confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract."). In sum, "conflicts that arise between state law

and a collective bargaining agreement are tasked to the judiciary to resolve." *State ex rel. Kilmartin v. Rhode Island Troopers Association*, 187 A.3d 1090, 1099 (R.I. 2018).

The hearing officer's contrary conclusion in reliance on *Belanger*, an inapposite case addressing the generally unreviewable nature of a final and binding arbitration decision involving a *discretionary* employment matter, constituted an error of law. *See* R. (DLT Decision) at 4-7 (citing *Belanger*, 115 R.I. at 345, 346 A.2d at 133 (discussing a union representative's duty of fair representation and judicial review of binding arbitration awards)). The instant matter does not involve a final and binding arbitration award, nor could it in light of *Local 2405, Council 94* and *RIASSE* because the Sunday premium pay requirement is nondiscretionary. The hearing officer's further reliance on *United Steelworkers of America* was similarly erroneous because, as discussed above, Appellants do not assert a "dispute . . . 'as to the meaning, interpretation and application of the provisions" of the CBA. *Compare United Steelworkers of America*, 363 U.S. at 565, *with* Compl. ¶ 3.[7]

Separately, as a further error, the CBA by its express terms applies only to "Table Game Dealers employed by the employer at its 100 Twin River Road, Lincoln, RI facility[.]" (CBA eff. Apr. 1, 2017, at 2, art. I, § 1.) The parties agree that Appellants include employees of both Twin River's Lincoln facility *and* its Tiverton facility. (Appellants' Mem. 2; Twin River's Mem. 1.) Therefore, to the extent the hearing officer denied and dismissed any claims by Union Claimants at the Tiverton facility—absent any further evidence beyond the CBAs in the limited record before

[7] The hearing officer's reference to *Hicks v. Powell*, No. PC 2010-4687, 2015 WL 4590842, at *7 (R.I. Super. July 24, 2015) for the proposition that "a Union should be given great latitude in determining the merits of an employee's grievance and the level of effort it will expend to pursue it" is similarly inapplicable to this suit, which does not involve a fair representation claim. (R. (DLT Decision) at 7.)

this Court—the CBAs do not apply to those claimants, and that determination was also clearly erroneous.[8]

As will be further explained, however, any error as to the Union Claimants was harmless because § 41-11-2(e) serves to bar all claims, Union and Non-union alike.

B

Section 41-11-2(e)

The DLT hearing officer correctly concluded that § 41-11-2(e) is clear and unambiguous on its face and exempts any Twin River entity licensed pursuant to chapters 3.1 and 7 of title 41 from the Sunday premium pay requirements. (R. (DLT Decision) 10.) "If the terms of the statute are clear and unambiguous, then the task of construction is at an end and the words of the statute must be applied as written without reference to extrinsic facts or aids." *Id.* at 10 (citing *Clark-Fitzpatrick Inc./Franki Foundation Co. v. Gill*, 652 A.2d 440, 443 (R.I. 1994)). "[T]his Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996).

Therefore, turning to the language of the statute, § 41-11-2(e) provides that, notwithstanding the Sunday Pay Act, "a licensee . . . shall not be required to provide employees time and a half pay for the work performed during Sundays[.]" (Section 41-11-2(e).) As already observed, although the hearing officer erred in failing to require evidence of Twin River's status as a proper "licensee," Appellants have not challenged that determination. *See generally*

[8] As noted, the record does not include the individual Wage Complaints, and the table of information provided to the Court in lieu of the complaints does not include the claimants' work locations or union status. *See generally* R. (Table of Wage Compls). The provided table categorizes all claimants as "utgr d/b/a/ twin river" [*sic*] despite Twin River's acknowledgement in its briefing to this Court that the Wage Complaints relate to "UTGR, Inc. Bally's Twin River Lincoln Casino Resort . . . and Twin River-Tiverton, LLC d/b/a Tiverton Casino Hotel[.]" *Compare id., with* Twin River's Mem. 7.

Appellants' Mem.; *see also* R. (DLT Decision) 9 n.12. Appellants dispute only the meaning of the term "employees," arguing that because § 41-11-2 is included in a section of the General Laws titled "Simulcast Programs From Licensed Betting Facilities," it only applies to employees necessary to Twin River's simulcast racing operations. (Appellants' Mem. 10-11.) Appellants maintain that if the Legislature intended the § 41-11-2(e) exemption to apply to table game employees, the General Assembly would have included equivalent language in G.L. 1956 chapter 61.2 of title 42, which governs "Video-Lottery Games, Table Games and Sports Wagering." *Id.*

Chapter 11 of title 41 does not define "employees." (Section 41-11-1.) In such circumstances, Rhode Island courts look to standard dictionary definitions. *See, e.g.*, *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 6 (R.I. 2022). Black's Law Dictionary defines "employee" as "[s]omeone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." Black's Law Dictionary 543 (7th ed. 1999). Webster's similarly defines "employee" as "one who is hired by another, or by a business firm, etc., to work for wages or salary." Webster's New Universal Unabridged Dictionary 595 (2d. ed. 1983). The Court also notes that the Sunday Pay Act likewise defines "employee" as "any individual employed by an employer." (Section 25-3-1.)

The simplicity and uniformity of these definitions demonstrates that there is no ambiguity in the plain and ordinary meaning of the term "employees," and Appellants do not "provide an alternative meaning . . . such that the [word] could be susceptible on its face of more than one meaning." *Freepoint Solar LLC*, 274 A.3d at 7. Instead, they attempt to circumscribe an unambiguous term "to a narrower subclassification than that which the word conveys on its face," *id.*, specifically that "employee" means only "simulcast employee." (Appellants' Mem. 10-11.)

As our Supreme Court recently instructed in *Freepoint Solar*, however, there exists "longstanding precedent that, when faced with an otherwise plain and unambiguous [statute], [courts] will not seek out ambiguity where none otherwise exists." *Freepoint Solar LLC*, 274 A.3d at 7.

This Court must heed that advice and afford the word "employees" its plain and ordinary meaning. *See id.*; *Accent Store Design, Inc.*, 674 A.2d at 1226. If the Legislature had intended to exempt only a licensee's simulcast employees from Sunday premium pay, as Appellants argue, the General Assembly would have stated as such—instead, the exemption unambiguously applies on its face to the "licensee" and its "employees" broadly.[9] (Section 41-11-2(e).)

Further, contrary to Appellants' assertion that an exemption for gaming employees would more naturally and exclusively reside in chapter 61.2 of title 42, an unambiguous reference to a licensed entity's "employees" is not limited by a statutory title. *See Orthopedic Specialists, Inc. v. Great Atlantic & Pacific Tea Co.*, 120 R.I. 378, 383-84, 388 A.2d 352, 355 (1978) ("As a general proposition of statutory construction, titles do not control the meaning of statutes."). "[T]he title of an act or subpart thereof may be considered to aid construction . . . but cannot control or vary the meaning of a statute where that statute is unambiguous." *Id.* at 384, 388 A.2d at 355. This is especially true considering that our General Laws demonstrate that the Legislature was aware that Twin River's Tiverton facility offered pari-mutuel wagering as well as video lottery games and

[9] Consequently, the hearing officer's assessment of legislative intent in the face of an unambiguous statute was unnecessary, and his discussion of arguments of counsel, allegations of intent, and "presumed" legislative intent to support his conclusions was in error. *See* R. (DLT Decision) 3, 9-10; *see also* § 42-35-15(g)(5) (requiring that agency decisions be based on reliable, probative and substantial record evidence); *Martin v. Howard*, 784 A.2d 291, 298-99 (R.I. 2001) ("Arguments of counsel are not evidence."). The proper question before the hearing officer was not whether § 41-11-2(e) "had the intended goal of relieving Twin River of the obligation to pay Sunday wages," *see* R. (DLT Decision) 9; the question was whether the plain and ordinary meaning of § 41-11-2(e) provided such an exemption. *See Such v. State*, 950 A.2d 1150, 1158 (R.I. 2008) ("To the extent that this Court examines the circumstances surrounding the enactment of a statute, it engages in this exercise only when the statute is ambiguous.").

casino games, and reflect that the Legislature similarly contemplated that pari-mutuel wagering and gaming would occur at the Lincoln facility. *See* §§ 41-7-3(d); 41-3.1-11; *see also State v. Reis*, 430 A.2d 749, 752 (R.I. 1981) ("The Legislature is . . . presumed to know the state of existing relevant law when it enacts a statute."). The hearing officer therefore properly concluded that § 41-11-2(e) applies to all "employees" of a licensee.[10]

IV

Conclusion

After review of the entire record, this Court affirms the conclusion of the DLT hearing officer that § 41-11-2(e) exempts Twin River's Tiverton and Lincoln employees from the Sunday premium pay requirement found in § 25-3-3(a) to the extent that those employees are employed by entities that are licensees as defined by § 41-11-1(2). This holding applies to all claimants, Union and Non-union. Consequently, any error in the hearing officer's assessment of the Union Claimants was harmless, and the Court affirms the DLT's decision denying and dismissing all claims. Counsel shall prepare the appropriate judgment for entry.

[10] Considering this conclusion, it is unnecessary for the Court to consider whether Twin River operates an exempt "recreational facility" by operation of § 25-3-1.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Syripannho, et al. v. Twin River Casino, et al.**
CASE NO:	**PC-2022-692**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 25, 2023**
JUSTICE/MAGISTRATE:	**Nugent, J.**
ATTORNEYS:	
For Plaintiff:	**Michael J. Beagan, Esq.**
For Defendant:	**Robert J. Cosentino, Esq.** **Michael D. Chittick, Esq.**